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May 3, 2024

VIA ECF


The Honorable Jennifer L. Rochon
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

The request is DENIED as no motion to stay discovery has been filed. The initial pre-trial conference remains scheduled for May 10, 2024 at 12:00 p.m.

SO ORDERED.

Dated: May 6, 2024

New York, New York


JENNIFER L. ROCHON
United States District Judge

Re: *Idle Media, Inc., et al. v. Create Music Group, Inc., et al.*, Case No. 1:24-cv-00805-JLR
Request for Adjournment, or Extension, of Initial Pre-Trial Conference

Dear Judge Rochon:

We represent Defendant Create Music Group, Inc. (“CMG” or “Defendant”) in the above-referenced matter. Pursuant to Rule 1.F. of Your Honor’s Individual Rules of Practice, we respectfully request that the Initial Pre-Trial Conference, currently scheduled for May 10, 2024 at 12:00 p.m., be adjourned, or in the alternative extended, for the reasons discussed herein.

CMG filed a Motion to Dismiss Plaintiffs’ First Amended Complaint (“FAC”) on April 26, 2024. (Dkt. No. 34). The current date for Plaintiffs to file an opposition to CMG’s Motion to Dismiss is May 24, 2024, and the deadline for CMG to file a reply is June 7, 2024. (Dkt. No. 36). Additionally, Defendant Kyle Reilly’s responsive pleading is due May 20, 2024. Defendant Reilly has expressed that he anticipates likewise filing a Motion to Dismiss.

CMG seeks to stay the Initial Pre-Trial Conference until after the Court has had the opportunity to rule on CMG’s Motion to Dismiss and Reilly’s anticipated Motion to Dismiss. CMG has not requested any other extensions of time in this matter. In the case that the Court does not want to stay the Initial Pre-Trial Conference, CMG alternatively requests that the Court consider extending the Initial Pre-Trial Conference to one of the following dates, which have been approved by all Parties in this matter:

- Friday, July 12, 2024
- Friday, July 26, 2024
- Friday, August 16, 2024

On May 1, 2024, CMG contacted Plaintiffs’ counsel via email regarding extending the Initial Pre-Trial Conference. CMG asked whether Plaintiffs’ would consent to either vacating the date of the Pre-Trial Conference until this Court has had an opportunity to rule on Defendants’ pending motions, or to extending the Pre-Trial Conference 60 days. CMG expressed, in the interest of judicial efficiency, it would be in the best interests of the parties’ and the Court to allow the pending and anticipated Motion’s to be fully briefed prior to conducting the Conference. In consideration of the fact that this action may be transferred or dismissed in its entirety, it would

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preserve party and Court resources and costs to stay the Initial Pre-Trial Conference until Defendants' initial Motions are resolved. Defendant Reilly has indicated he is amenable to a stay or continuance.

Plaintiffs' provided the following opposition to CMG's request: Plaintiffs do not consent to Defendants' request. The reason for not consenting is that it is Plaintiffs' position that Defendants are effectively trying to stay discovery by bypassing motion practice. A motion to dismiss does not automatically stay discovery, and to do so, a formal motion needs to be made. Defendants have not made a showing that they would be successful on such a motion, as discovery is inevitable even if this case is transferred, nor is a letter extension request the appropriate means for the issue to be briefed. Defendants will suffer no prejudice by proceeding with the pre-trial conference. If Defendants want to make a motion to stay they should do so, so that Plaintiffs can properly oppose.

CMG's Response: CMG is not requesting a stay of discovery through filing this letter motion. CMG is merely requesting a stay, or in the alternative a continuance, of the Initial Pre-Trial Conference. As discussed further herein, it is CMG's position that it is premature to set discovery and trial dates given the pending and anticipated Motions to Dismiss. Discovery is not inevitable given the strong possibility of dismissal of the entire case for one or more parties. To the extent discovery is inevitable, it should be done in California pursuant to the Central District's calendar.

With regard to CMG's Motion to Transfer Venue, CMG's position is that SDNY is not an efficient venue for this action. Neither the Plaintiffs nor the Defendants are residents of New York or SDNY. None of the alleged actions occurred in New York or SDNY. In short, Plaintiffs are forum shopping. CMG moved this Court to transfer venue to the Central District of California where both CMG and Reilly reside, and all of their evidence and witnesses are located. In the event this Court does not transfer this action, CMG moved (and Reilly will move) to dismiss the FAC in its entirety on a number of grounds, such as Plaintiff Idle Media's lack of standing, Statue of Frauds issues, preemption, and failure to state a claim, as applicable. In his own anticipated Motion to Dismiss, Reilly's counsel has informed us that he will also seek to have all of Plaintiffs' claims against him dismissed based on lack of personal jurisdiction and improper venue, among other grounds. In addition, Reilly has indicated his concern with waiving jurisdictional and venue arguments, and in the event the Pre-Trial Conference is not stayed or continued, Reilly expressly reserves the right to move for dismissal on jurisdictional grounds, and that his participation in such Conference should not be deemed an acquiescence to the jurisdiction of this Court.

In the spirit of judicial economy, given CMG's filed Motion to Dismiss on April 26, 2024, Reilly's anticipated Motion to Dismiss on May 20, 2024, Reilly's contemplated Rule 11 Motion, and the fact that the outcome of such motions may dismiss the entirety of the case as to all causes of action and/or transfer venue to the Central District of California, CMG respectfully requests that the Initial Pre-Trial Conference be stayed and trial dates not be scheduled until the Court has the opportunity to rule on such motions.

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Respectfully submitted,

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BRIANNA LOGAN, SBN 347947

/s/ Brianna N. Logan
BRIANNA N. LOGAN (*admitted pro hac vice*)

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Cc: All counsel (via ECF)